SUPREME COURT OF THE UNITED STATES.

No. 67.

EDMUND P. GAINES AND WIFE, COMPLAINANTS,

vs.

BEVERLY CHEW, RICHARD RELF, & AL.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR EAST LOUISIANA.

INDEX.

	Original.	Print.
Bill of Complaint,	1	3
Demurrer of Barnes and Wife,	11	29
Demurrer of Chew and Relf,	20	34
Points of Division,	29	38
Clerk's Certificate,	30	39

S. D. Langtree, Print.

In Equity:

Before the Hon. Saml. H. Harper.

To the Honorable the District Court of the United States for the Eastern District of Louisiana.

Humbly complaining, your orator and oratrix, William Wallace Whitney and Myra Clark Whitney, his wife, citizens of the State of New York, show unto this honorable court, that Daniel Clark, late of the city of New Orleans, in the State of Louisiana, and father of your oratrix, the said Myra, was, at the time of making his last will hereinafter mentioned, and at his death, seized in fee simple, or otherwise well entitled to, and lawfully possessed of, in the said eastern district of Louisiana, divers freehold messuages, plantations, lands, tenements, hereditaments, and premises, and particularly of the plantations, lands, and premises, hereinafter enumerated, and situate, bounded, and described as follows: that is to say—

1st. One valuable plantation, parcel, or tract of land situated in the parish of in the 1st District in the State of Louisiana, about five leagues above the city of New Orleans, on the left bank of the Mississippi river; and bounded on the upper side by lands owned or possessed in the month of October, 1813, by one William Kenner; and on the lower side by lands which were owned or possessed in said October, 1813, by Jacques Fortier; and extending in front on the said river, Mississippi, twenty-four and one half arpents; and extending in depth on both sides to lake Ponchartrain, with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or are in anywise appertaining, being the same plantation, piece, or parcel of land which was purchased by the said Daniel Clark, in his life time, of one Stephen Henderson, for the sum of one hundred and twenty thousand dollars.

2d. A tract, portion, or square of land situated in the suburb St. Mary, of the said New Orleans, being the square of ground in said suburb bounded on one side by Phillippa street, on the second side by Poydras street, on the third side by Circus street, and on the fourth side by Perdido street; and measuring on Phillippa street, three hundred and eighteen feet, more or less; on Poydras street, one hundred and seventy-nine feet and six inches, more or less; on Circus street, three hundred and forty-six feet, more or less; and on Perdido street, two hundred and eleven feet six inches; be the same more or less, together with all the buildings, tenements,

hereditaments, and appurtenances thereunto belonging, or in anywise appertaining.

3d. A piece, parcel, or tract of land, with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, situate in the parish of New Orleans, on the right hand side of the Gentilly road, on going towards Gentilly from the city of New Orleans, and in the neighborhood of said Gentilly, and being about twenty-two arpents in front on said Gentilly road, and possessing depth and extending back from said road, according to a plan of said piece, parcel, or tract of land deposited in the office of Savinier Blanc, Notary Public, in and for the parish and city of New Orleans, by Richard Relf and Beverly Chew, by act dated the 27th day of December, 1820.

4th. A piece, or parcel of land, with the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, situate in the city of New Orleans and being known and distinguished as lots, number one hundred and eighty-four, and one hundred and eighty-six, in Royal street in said city, being the same lot of land and buildings which were sold and conveyed, together with other property, to said Daniel Clarke, by James Pitot, by act of sale before Peter Pedesclaux, Notary Public, on the 24th day of February, 1813, measuring thirty feet in front on said Royal street, and one hundred and twenty feet in depth; and bounded on one side by property which, in said month of February, 1813, was owned or possessed by Madame Widow Lanties, and on the other side by property which, in said month of February, was owned by Messrs. Grandchamp and Monnier.

5th. Three lots of land adjoining together and forming but one piece or parcel of land, and each lot being about sixty feet front, and one hundred and twenty feet deep, and situated on the southerly corner formed by the intersection of Toulouse and Burgundy streets, of the square of ground in the said city of New Orleans, which is bounded and enclosed on one side by said Toulouse street, on the second side by Rempart street, on the third side by St. Peter street, and on the fourth side by said Burgundy street, together with all the tenements, hereditaments thereunto belonging or in anywise appertaining; the said three lots of land, which form together as aforesaid but one piece or parcel of land, being the same that were sold and conveyed, together with other property, to said Daniel Clark by the aforesaid James Pitot, by act of sale passed before Pierre Pedesclaux, on February 24th, 1813, and are known and designated on a map, or plan of the square, formerly the old burying ground, and included as aforesaid between Toulouse, Rampart, St. Peter, and Burgundy streets, drawn by Carlos Trudeau, dated June 11th, 1801, and deposited in the office of P. Pedesclaux, Notary Public, as lots No. 1, 2, and 12; said No. 1 forming the said corner of Toulouse and Burgundy streets, and measuring

sixty feet four inches in front on Burgundy street, and 120 feet deep.

6th. A piece, parcel, or tract of land situated in the quarter of the Bayou St. John, in the said parish of New Orleans, containing about one hundred and thirty-five arpents, and adjoining the road of the canal Carondelet, and the land of E. Conchieux; running thence along Broad street to Bellechasse street, of the Fauxbourg St. John, and land which, in the month of October, 1821, was owned or possessed by Mrs. Herry; thence to the land of Evariste Blanc and to the Bayou St. John, in conformity with a plan drawn by Joseph Pilie, dated August 20th, 1821, and annexed to an act of sale of said tract, made by Richard Relf and Beverly Chew, to Evariste Blanc, and passed before Phillip Pedesclaux on the 30th day of October, 1821, together with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining.

7th. A lot of land, with the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, situated in the suburb St. John, at about half a league from the city of New Orleans, being known and distinguished on a plan of the said suburb, made by B. Lafon, dated the first day of June, 1809, and deposited in the office of P. Pedesclaux, Notary of the said city of New Orleans, as lot No. 3, in the square 23, of the said suburb St. John, being sixty feet in front on Washington street, and about one hundred and twenty feet deep.

8th. Eight lots of land, from No. 1 to No. 8, both inclusive, forming the square No. 28, of the suburb St. John, in the said city and parish of New Orleans, as the same are laid down and described on the beforementioned plan of the said suburb St. John, made by B. Lafon, together with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining.

9th. A lot of land situated in the said suburb St. John, in the square designated in the abovementioned plan, made by B. Lafon, as the square No. 35, being 192 feet in front on Washington street and sixty-four feet deep, and forming a corner of said square of number 35, together with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining.

10th. A piece, parcel, tract, or square of land in the said suburb St. John, and known and distinguished on the said plan made by the said B. Lafon, as the square No. four in the said suburb St. John, and measuring two hundred feet in front on said Washington street; three hundred feet in front on St. John street; one hundred and thirty feet front on Broad street; and eighty feet front on place Le Breton; together with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining.

11th. A plantation or tract of land situated on the right hand bank of the Bayou Lafourche, opposite the town of Donaldsonville, and measuring eleven arpents in front on the river Mississippi, and twenty-nine arpents on the said Bayou Lafourche, be the same more or less, being the same tract or parcel of land which, during the life time of the said Daniel Clark, was purchased and held by Wade Hampton for the said Daniel Clark, and conveyed in February, 1818, by act passed before Charles D , judge of the parish of Ascension, by said Hampton, after the death of said Daniel Clarke, to Richard Relf, one of the defendants hereinafter named, who assumed to receive such conveyance as pretended executor of said Daniel Clarke, and who subsequently conveyed the said tract or parcel of land to one Bartholemy Lafon.

12th. A tract of land purchased by Daniel Clark of William Simpson, by act passed before P. Pedesclaux, Notary Public of the city of New Orleans, on the 5th day of June, 1812, and which is situated in the parish of Ascension, and county of Acadia, on the left bank of the river Mississippi, measuring in front on said Mississippi river eighteen and one-half arpents, and extending back from said river Mississippi in depth forty arpents, and bounded on the lower side by land which was owned, in 1816, by Beverly Chew and Richard Relf, and on the upper side by land which was sold and conveyed in said year 1816, by Beverly Chew and Richard Relf, to Stephen Henderson and G. N. Destrehan.

13th. A lot, piece, or parcel of land in the city of New Orleans, in the square bounded by Delord street, Tivoli place, Saint Charles street, St. Joseph street, and Camp street, being the lot on the south-easterly corner of said square; which corner is formed by the intersection of the said Camp street and Delord street, in the suburb St. Mary, of the city of New Orleans, and measuring sixty feet, French measure, on Camp street, and one hundred and twenty feet, French measure, on Delord street.

14th. The equal, undivided half part of a tract of land situated at Manchac, on the east bank of the river Mississippi, and bounded on the upper side by lands which, in the year 1815, were owned or possessed by the widow Harson, and on the lower side by lands reserved by the Spanish Government for the fort, with all the depth that is expressed or conveyed to the said Daniel Clarke, in an act passed before Peter Pedesclaux, of New Orleans, Notary Public, dated June 23d, 1806, with all the rights, profits, commodities, servitudes, and appurtenances to the same belonging, or in anywise appertaining, being the same that the said Daniel Clark sold and conveyed in his life time to Celestine Saint M , by act passed before John Lynd, Notary Public, on March 6th, 1811; which act of sale was afterwards, to wit, on the 28th day of May, 1814, rescinded by sentence of the District Court of the then third District of Louisiana.

15th. A piece, parcel, or tract of land situated near Duval's

plain, abont two leagues from the town of Baton Rouge, in Louisiana, containing five hundred arpents, be the same more or less, being the same tract which said Daniel Clarke acquired by purchase of Charles Fessin, by an act passed before the parish judge of the parish of Baton Rouge, in the State of Louisiana.

16th. A tract of land containing fourteen thousand and forty-seven arpents, be the same more or less, situate on the east side of the river Comite, nine miles from its confluence with the river Amite, and bounded, in the year 1819, on the north by lands belonging to the said Daniel Clark, on the south by lands granted to Sophia, Josepha, and Rosalia Grandpre, on the east by public land, and on the west by the river Comite, as appears by a certificate and plan or map of survey executed by Don Vincent Sebastien Pintado, and dated October 13th, 1803, and numbered 1649.

17th. A tract of land containing twelve hundred and forty-eight arpents, situated in the district of East Baton Rouge, in the said Eastern District of Louisiana, six and one-quarter miles east of the river Mississippi, and ten miles north quarter north-east of the fort of Baton Rouge, and bounded, in 1819, north and east by public lands, on the south by land granted to John F , and on the west by lands of the late John Bretillier and late John Posset, as appears by a certificate and plan of survey executed by said V. S. Pintado, dated October 9th, 1803, and number 1644.

18th. A tract of land containing four thousand three hundred and sixty-four arpents, situated in the district of Baton Rouge, in the said Eastern District of Louisiana, on the west side of Sandy Creek, nineteen miles south of the line of demarkation, and bounded, in 1819, on the north and west by public lands, on the south by lands granted to Carlos, and on the east by said Creek, as appears by a plan and certificate executed by V. S. Pintado, dated December 23d, 1803, number 1698.

19th. A tract of land three thousand eight hundred and twenty arpents, situated in the said Eastern District of Louisiana, on the west side of the river Comite, and fronting thereon, three and one-third miles above Redwood Creek, and bounded, in 1819, on the north by vacant lands, on the south by lands granted J. B. Labitut, on the east by the said river Comite, and on the west by land belonging to the estate of the said Daniel Clark, as appears by a plan and certificate of survey, number 1699.

20th. A tract of land containing two thousand five hundred arpents, situated in the said Eastern District of Louisiana, at the head of Jones' Creek, six and one-quarter miles east, quarter north east from the fort of Baton Rouge, and bounded, in 1819, on the north and east by vacant lands, on the south by lands belonging to the said Daniel Clark, as appears by certificate 1700.

21st. A tract of land containing two thousand arpents, situated in the said Eastern District of Louisiana, nine and one-quarter miles east, quarter south-east from the fort of Baton Rouge, and

bounded, in 1819, on the north by land of the said Daniel Clark, and on the south-east and west by vacant lands, as appears by a plan or map and certificate of survey, No. 1700.

22d. A tract of land containing twenty-one thousand nine hundred and twenty-one arpents, being an undivided part of three tracts, containing fifty-two thousand arpents, situated on the east side of the river Amite, in the said Eastern District of Louisiana, the lower line being about eight miles above its confluence with the river Comite, and bounded, in 1819, on the north by land granted to Jerome Lachapelli, on the south by land granted to G. M. Morgan, on the east by vacant lands, and on the west by the river Amite, as appears by the plan or map and certificate of survey of Chas. Trudeau, number 1721, and dated April 17th, 1804.

23d. The equal, undivided half part of a tract of land, or plantation, situated in the parish of St. John the Baptist, at about twelve leagues from the city of New Orleans, having about ten arpents in front on the river Mississippi, and forty in depth, and bounded, in 1814, on one side by lands owned or possessed by Cambre, and on the other by lands owned or possessed by the widow of James Deslondes.

24th. The equal, undivided half part of a plantation or tract of land, in the said parish of St. John the Baptist, being about four and one half arpents, in front on the Mississippi river, and bounded in 1814 on one side by lands owned or possessed by Henry Mores, and on the other by lands owned or possessed by Fife Mores.

25th. A tract of land, situated on the left bank of the bayou Lafourche, in the said Eastern District of Louisiana, being about six arpents, in front on the said Bayou, and bounded in 1819 on both sides by lands owned and possessed by Louis Haitier.

26th. A tract of land, containing five thousand four hundred and seventy arpents, situated in the said Eastern District of Louisiana, on the eastern side of the river Comite, at or about twelve and three quarter miles from the line that separated the King of Spain's dominions from the American Territory, and bounded in 1813 by the lands surveyed for Don Mannel Parcia and Juan de Lassize, on the south by lands surveyed for Don Christoval de Armas, east by the said river Comite, and on the west by vacant lands.

And your orator and oratrix also show unto this honorable court, that the said Daniel Clark at the time of making his said last will, and at his death, was also possessed of as owner, interested in or otherwise well entitled to a large number of slaves and a considerable personal estate, and particularly to the slaves and personal estate hereinafter enumerated and described, that is to say:

1st. Two hundred and twenty-six slaves severally named: Will, Lubin, Coke, Solomon, Jacob, John, Jacques, Argen, Jacob, Antoine, David, George, Paul, Adam, Doctor David, Randolph, Etienne, Lubin, Ref, Providence, Lindor, Figuro, Nacisse, Nede, Isaac, Jean, Solomon, Austine, Jones, Gibaud, Wallis, Charles,

Jacques, Cordio, Davis, Cardinal, Jerome, L'Ebene, John, Merode, Willis, Moise, Davi, Andre, Dress, Andre, Thomfield, Bobe, Alce, James, Harry, Storder, Arthur, Ledger, Sam, Phœbe, Fanny, Anna, Genevieve, Betty, Polly with her two children, one named John and the other Suckling, Liza with her child William, a doctor negro, Hector, William, Janvier, Steward, Jim, Kersay, Manvier, Kett, Brown, John, Winy with her child David, Old Esther, Billy, Hannah, James McCall, Phille, Betsy with her child Monthson, Easther Morning, Sam, Old Lett, Grace, Elijah, James, Rose, Hannah, Bird, Patty, Lawrence, Franky, John, Charles, McKensy, Margaret, Fanny with her child Marie, Nelson, Major, Nanny with three children, Hellick, Banky and Maroja, Spender, Thenier, Old Major, Darky, Dorianna Smith, Cambridge, Rachel with her child Gabriella, L'Wenny, Sarah, Judich, Polly, Fanny, Mace, Molly, Nancy, Kevy, Jane, Nancy, Washington, Betty with her child Tom, Betty, George, Old Rachal, Dinah Dam, Levy, Anthony, Rachel, Charlotte, Waldrin, Patiance, Sukey, Lidley, Mamy Suky, Edmond, Nailey, Betty, Ben, Jenny, Kitly, Henrietta, Bob, Elsey, Betty, Peggy, Hartas, Thomas, Sally, Retti, Anny, William, Ben, Anny, Rasly, Jinny, Jones, Rachal, Jack, Mary, Joe, Sukey, Victoire, Joe, Rachal, Peggy, James, Harris, Rachal, George, James, Campaigne, Rose, Aime, Thom, Zazo, Peter, Mary, Duke, Chloe, James, Mary, Kelly, Darkey, Daniel, Louis, Sally, Luke, George, Job, Peggy, Jack, Nathan, Toby, Geoffry, Phil, David, David, James, Shecling, Lucy, Morrow, George, Rose, Rosetta, Hannah, Judick, Kelly, Silva, Ketty, Julia with her three children, named John, Quacks and Jenny, Louisa, Little Jim, Jerry, Jobby, Jeffrey, Nancy, Dinah with her child James, Charlotte, Kitty, Peggy with her child Jerry, Arthur, Sally, Rady, Rachel, Rachal; as the said two hundred and twenty-six slaves are enumerated and described in a document purporting to be an inventory of the property of the said Daniel Clark's succession, deposited in the probate court in and for the parish and city of New Orleans.

2d. Cows, oxen, mules and other animals, furniture and other articles of domestic use, books, shrubs and flowers, used and possessed during his lifetime by the said Daniel Clark, at or immediately in the vicinity of his dwelling or domicil in the suburb St. John, of the City of New Orleans, and which were of the value of four thousand and forty-four dollars, and upwards. And also certain other furniture, articles of domestic use, gardening, tools, implements of husbandry, horses, oxen, mules and other animals, of the value of three thousand eight hundred and seventy-three dollars, and upwards, which were owned and employed by the said Daniel Clark, during his lifetime, upon the said plantation hereinbefore described as purchased by him from Stephen Henderson, and also certain debts and demands against several individuals, and (amongst others) the following:

1st. A debt of sixteen thousand dollars, due to the said Daniel Clark, by Zenon Cavalier and Louis de Feriet, and secured by mortgage, being the purchase money of a plantation, situate on the road of the Meterie at the distance of one league and a half from New Orleans, sold to said Cavalier and De Feriet by said Daniel Clark, by act before Peter Pedesclaux, dated January 20th, 1812.

2d. A debt of fifteen hundred dollars, and upwards, due from David Porter to the said Daniel Clark.

3d. A debt of ten thousand dollars, and upwards, secured by mortgage and due to the said Daniel Clark from David Urquhart, David Williams, and James Williams, for a tract of land sold to them by the said Daniel Clark, by act passed before Peter Pedesclaux on the 16th day of March, 1812.

4th. Certain debts amounting in all, as nearly as your orator and oratrix are able to calculate the same, to the sum of eighty-five thousand four hundred and thirty-eight dollars and forty-one cents, as the same are specified in the document hereinbefore referred to as purporting to be an inventory of the estate of the said Daniel Clarke, and to which document your orator and oratrix for greater certainty here crave leave to refer whenever and as often as it may be necessary for them so to do.

And your orator and oratrix also show, that the said Daniel Clarke, at the time of making his last will hereinafter mentioned, and at his death, was entitled (amongst other property) to certain property, debts and demands, which are enumerated in a schedule of debts and property, made and filed by Richard Relf and Beverly Chew in the probate court for the parish and City of New Orleans, on the 3d day of March, 1814, the whole amount of the said schedule of debts and property being, as your orator and oratrix have been able to calculate the same, three hundred and twenty-three thousand one hundred and eighty-eight dollars and four cents, independently and exclusively of certain real estate, belonging to the said Daniel Clark, specified and set down in said schedule, at the value of three hundred and forty-four thousand dollars; and your orator and oratrix expressly charge, that all or nearly all of the said amount of three hundred and twenty-three thousand one hundred and twenty-eight dollars and four cents was belonging to, and the property of the said Daniel Clark at the time of his, the said Daniel Clark's death.

And your orator and oratrix further show unto this honorable court, and expressly charge, that previous to the death of the said Daniel Clark it had long been the intention and earnest desire of the said Daniel Clark, the father of your oratrix, to leave, at his decease, all his property and estate, real and personal, to your oratrix, the said Myra Clark Whitney; that in order more effectually to secure the fulfilment of said intention and desire, the said Daniel Clark did, in or about the month of July in the year 1813, duly make and execute his last will and testament according to law,

having wholly written and signed the same with his own hand, and did in and by the said will declare your oratrix, the said Myra Clark Whitney, to be his legitimate child, and the said Daniel Clark did also in and by his said last will, devise and bequeath to your oratrix, the said Myra Clark Whitney, all his, the said Daniel Clark's property and estate, real and personal, and did name therein as the executors of the said will, Colonel Joseph Deville, Degontin Bellechasse, James Pitot, and Chevalier Dusuau de la Croix, appointing the said Chevalier de la Croix tutor also of your oratrix, the said Myra Clark Whitney, your oratrix being then an infant under the age of twenty-one years, to-wit: of the age of seven years.

And your orator and oratrix further show unto this honorable court, that the said will also contains some bequests to friends, amongst which bequests were a legacy or annuity of two thousand dollars per annum, to be paid to Mary Clark, the mother of the said Daniel Clark, during the lifetime of the said Mary Clark; an annuity of five hundred dollars, to be paid yearly to one Caroline De Grange, until the said Caroline should have attained her majority, when the annuity should cease, and the sum of dollars should be paid to her; and also a bequest of thousand dollars, to be paid to the son of the said Judge, James Pitot; and the said will further contained specific and detailed instructions respecting the education of your oratrix, the said Myra, and the management of the estate and property of the said Daniel Clark during the infancy of your oratrix.

And your orator and oratrix further show unto this honorable court, and expressly charge, that the said will was wholly written and signed with the proper hand of the said Daniel Clark; that the said will was shown by the said Daniel Clark to, and its contents read by the said Judge, James Pitot, the late John Lynd, notary public in and for the parish and City of New Orleans, Mrs. Harriet Smith and others; and that the said will was also shown, and its contents communicated by the said Daniel Clark to the said Colonel Bellechasse, Chevalier De la Croix, Mr. Pierre Baron Boisfontaine, and others, and that the said *David* Clark departed this life on or about the 16th day of August, in the year 1813, without altering or revoking his said will, and leaving your oratrix, the said Myra Clark Whitney, his only child or descendant, and the forced or instituted heiress of all his property and estates, real and personal.

And your orator and oratrix further show unto this honorable court, and expressly charge, that the said Daniel Clark left at his decease no child or descendant him surviving, except your oratrix, the said Myra Clark Whitney, and that your oratrix, the said Myra Clark Whitney, was and is the lawful and legitimate and only child or descendant of the said Daniel Clark, and entitled as such by the law of the land to the possession and inheritance of all the

property and estate of the said Daniel Clark, and especially to the property and estate, real and personal, hereinbefore enumerated and described.

And your orator and oratrix further show unto this honorable court, and especially charge, that your oratrix, the said Myra Clark Whitney, soon after her birth, which took place in the month of July, 1806, was placed by her father, the said Daniel Clark, in the family of Samuel B. Davis, with whom she continued to live at New Orleans until the year 1812, when the said Samuel B. Davis removed to live to the city of Philadelphia, in the State of Pennsylvania; that your oratrix, the said Myra, accompanied the family of the said Samuel B. Davis to Philadelphia, and remained in his, the said Samuel B. Davis' family, until the time of the death of the said Daniel Clark and afterwards; and that during the lifetime of the said Daniel Clark, he, the said Daniel Clark, continued to exercise the authority, care and protection of a parent in regard to your oratrix, the said Myra Clark Whitney.

And your orator and oratrix further show unto this honorable court, that in or about the month of May, in the year 1811, the said Daniel Clark was led to believe, that one Daniel W. Coxe, of Philadelphia, with whom he had previously had some connexion in business, had by imprudence or misconduct involved him, the said Daniel Clark, in some serious pecuniary and commercial difficulties and embarrassments—that immediately thereupon the said Daniel Clark deemed it advisable to proceed forthwith to Philadelplia, in order to attend personally to the settlement of the difficulties, which it was represented to him existed—that preparatory to his undertaking the voyage from New Orleans to Philadelphia for the purposes aforesaid, and in or about the month of May, 1811, he, the said Daniel Clark, conveyed property to Samuel B. Davis and others, to the amount of several hundred thousand dollars, to be held in trust by them for your oratrix, and then at or about the said time there made a will devising briefly and in general terms his property to his mother, Mary Clark, then residing out of the State of Louisiana, and also appointing Richard Relf and Beverly Chew, two of the defendants herein, the executors thereof.

And your orator and oratrix further show, that the said Daniel Clark, in or about the said month of July 1811, proceeded to Philadelphia, and returned again in a few months thereafter, and in the same year to New Orleans—that the said Daniel Clark had ascertained at Philadelphia, upon his having proceeded thither as aforesaid, that his interests had not been so seriously jeopardized by the said Daniel W. Coxe, as he had been led to believe as above stated, previous to his having gone there—that he did therefore, upon his said return to New Orleans, receive back some portions of the property which he had conveyed, as aforesaid, in trust for your oratrix, the said Myra, which under the above mentioned erroneous belief respecting the supposed difficulties in which the

said Coxe was alledged to have involved him; and that upon his said return to New Orleans, and upon his having ascertained, as aforesaid, the groundlessness of the apprehension which had been excited in his mind relative to the consequences that might result to himself from the transactions of the said Daniel W. Coxe, he, the said Daniel Clark, did also declare, that he no longer intended that the said will, made in 1811, should be his last will; that he had made it while laboring under false impressions and only provisionally, and that he should revoke the said will of 1811, and make and execute another will, devising and bequeathing all his eatate, real and personal, to your oratrix, the said Myra Clark Whitney; and your orator and oratrix shew unto this honorable court, and expressly charge, that the said Daniel Clark did revoke the said will made in 1811, as aforesaid, and did, after the making and execution of the said will of 1811, duly make and execute in the year 1813, and but a short time before his death, as your orator and oratrix have hereinbefore set forth, his, the said Daniel Clark's last will and testament, devising and bequeathing thereby to your oratrix, the said Myra Clark Whitney, all of the real and personal estate of him, the said Daniel Clark, and declaring your oratrix, the said Myra, to be the legitimate child of him, the said Daniel Clark, as your orator and oratrix have hereinbefore more particularly stated; and that the said Daniel Clark did upon his deathbed, and unto the very moment of his decease, continue to declare that the aforesaid will made by him in the year 1813, devising all his property, as aforesaid, to your oratrix, the said Myra, was his last will and testament, and was then contained in a black case in his office room, in the house in which he was at the time, and in which he died almost at the moment of making the said declaration in favor of your oratrix, the said Myra.

And your orator and oratrix further show unto this honorable court, that the said Daniel Clark, upon making the said will of 1811, delivered it to the said Richard Relf and Beverly Chew, or one of them, and allowed it to remain in their keeping from thenceforth—that the said Daniel Clark was very extensively engaged in mercantile and other business, and speculations, and possessed a vast amount of property, and that the said Richard Relf acted as his agent in relation to many of the transactions and affairs, in which he, the said Daniel Clark, was engaged—that at and immediately before the time of the death of the said Daniel Clark, the said Richard Relf assumed to direct the domestic arrangements of the said Daniel Clark, and attended during the last illness of the said Daniel Clark, at his, the said Daniel Clark's dwelling house, and took upon himself the sole controul of the household and the affairs of the said Daniel Clark, and that instantly upon the death of the said Daniel Clark, all the books, papers, letters, documents and all deeds and writings of what nature soever, belonging to the said Daniel Clark, came into the sole possession of him, the said Richard Relf.

And your orator and oratrix further show unto this honorable court, and expressly charge, that the said will of 1813, made by the said Daniel Clark in favor of the said Myra, came into the possession of the said Richard Relf, immediately upon the death of the said Daniel Clark, and that the said Richard Relf fraudulently concealed, suppressed or destroyed the same, or caused it to be concealed, suppressed or destroyed, and did substitute in its place or stead, the said old revoked will of 1811, in which he, the said Richard Relf, was named an executor; and that the said last will of 1813 was never seen by any one after the death of the said Daniel Clark, except by the said Richard Relf and Beverly Chew, and their confederates.

And your orator and oratrix further show unto this honorable court, and expressly charge, that the said Richard Relf did fraudulently cause the said old revoked will, made in 1811, to be admitted to probate in the probate court for the parish and city of New Orleans, and procured himself, the said Richard Relf, to be sworn and authorised by the said probate court, as the testamentary executor of the said Daniel Clark.

And your orator and oratrix also show unto this honorable court, that the said Beverly Chew did also, soon after the death of the said Daniel Clark, to wit, in the month of January, 1814, procure himself to be sworn and authorised by the said court of probates for the parish and city of New Orleans, to act as testamentary executor of the said Daniel Clark, under the said revoked will of 1811.

And your orator and oratrix show further unto this honorable court, that when the said Richard Relf and Beverly Chew took upon themselves the office of testamentary executors of the said Daniel Clark, as aforesaid, there was no relative, or any person claiming to be heir of the said Daniel Clark in the State of Louisiana; that your oratrix was then an infant under the age of seven years, and resided at that time in the city of Philadelphia, in the State of Pennsylvania, with the family of the said Samuel B. Davis, and that Mary Clark, the mother of the said Daniel Clark, who was named as aforesaid devisee of the said Daniel Clark in the said old revoked will of 1811, was also then a resident of the State of Pennsylvania, and continued to reside there until her death, which happened some years afer the death of the said Daniel Clark—that the said Daniel Clark was a native of Ireland, from which country he emigrated to Louisiana, as your orator and oratrix have been informed, and verily believe, in or about the year 17 , and that all his immediate relatives and family resided at the time of his death; either in Ireland or in the State of Pennsylvania, and that none of them ever visited Louisiana, until many years after his death, that the said Richard Relf and Beverly Chew fraudulently possessed themselves, immediately after the death of the said Daniel Clark, of the personal estate, effects and credits of the said Daniel Clark to a great amount, and also entered into possession of the real estates of the said Daniel Clark, and into the receipts

of the rents and profits thereof, by falsely and fraudulently representing the said estate to be insolvent, and by other fraudulent means continued, and were enabled to continue, and have ever since continued, and now are, in such possession, or in possession of a large portion thereof; and your orator and oratrix also show that the said Richard Relf and Beverly Chew made sales of the property and effects, real and personal, of the said Daniel Clark, and have received very large sums of money amounting to several hundreds of thousands of dollars from the said estate, real and personal, and have retained in their hands, or otherwise appropriated or disposed of the same, for their own uses and purposes, and that in all such actings and doings, and in all the matters relating to the said estate, they, the said Richard Relf and Beverly Chew, have acted fraudulently and without the knowledge, consent or approbation of your orator and oratrix, or of either of them, or of any other person or persons having a right, or being duly and legally authorised to sanction, consent to, or approve of the same.

And your orator and oratrix further show unto this honorable court, that from and after the time of the death of the said Daniel Clark, and until about the year 1832, when your oratrix, the said Myra Clark Whitney, became the wife of your *your* orator, the said William Wallace Whitney, your oratrix, the said Myra, continued to reside in the family of the said Samuel B. Davis, who lived, during all or nearly all that time in the State of Pennsylvania; and your orator and oratrix also show and expressly charge, that during the lifetime of the said Daniel Clark, the father of your oratrix, the said Myra, your oratrix, was always known and called by her true and rightful name of Myra Clark, and by no other name; and that from and after the death of the said Daniel Clark, until, at or about the time of the marriage of your oratrix, the said Myra, with your orator, the said William Wallace Whitney, your oratrix, the said Myra, was designated and called in the family of the said Samuel B. Davis, by the name of Myra Davis, and by no other name, and was kept in ignorance of her real name, parentage and true history, and of her rights and her title to the inheritance and possession of the estate of the said Daniel Clark, and was consequently unable during all that time to take the necessary measures for asserting her title to the said inheritance of her father, the said Daniel Clark; that at, or about the time of the marriage of your oratrix, the said Myra, with your orator, the said William Wallace Whitney, your oratrix was brought by accident to the discovery of her true name and parentage, and was subsequently made more fully acquainted with the circumstances of her history and rights, by the said Samuel B. Davis and others; and that your orator and oratrix have ever since the time of the said marriage of your oratrix with your orator, been and are now actively engaged in endeavors to establish the legal rights and claims of your oratrix, the said Myra, to the property and estate, real and personal, of the said Daniel Clark.

And your orator and oratrix further show unto this honorable court, that the said Mary Clark died in the year 18 , as your orator and oratrix are informed, and verily believe, and that as your orator and oratrix have been informed, and verily believe, the next heirs and relatives left by the said Mary Clark, surviving her at her decease, were, besides your oratrix, the said Myra, Eleonor O'Barne, a daughter of the said Mary Clark, Jane Green, wife of George Green, and daughter of said Mary Clark, and Sarah Campbell, a grand-daughter of the said Mary Clark.

And your orator and oratrix show further unto this honorable court, that Mrs. Widow Holliday and John Holliday now occupy and possess, or claim to hold as owners or otherwise, the first above described enumerated piece, parcel or tract of land, or plantation purchased by the said Daniel Clark, of one Stephen Henderson, for $120,000—that Ramon Masana, Jean B. Ambroise, John Minturn, Belfin Berdoule, Manuel Marquez, John Mathieu, Thos. D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, the New Orleans & Carrollton Rail Road Company, Mrs. Widow Jaubert, Charles Patterson, and Charles Fonde, each claims to hold severally as owner or otherwise, some portion, piece or parcel of the second above described and enumerated tract, portion, or square of land situated in the suburb St. Mary, of the city of New Orleans, and bounded on the one side by Phillippa street, on the second side by Poydras street, on the third side by Circus street, and on the fourth by Perdido street; and the said Ramon Masana, Jean B. Ambrose, Jean Mathieu, Antoine Piernas, Mrs. Widow Jaubert and Charles Patterson; and also Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Guichanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise and Charles Edwards, are in the actual possession and occupation of the said second above described and enumerated tract, portion or square of land, bounded as aforesaid by Phillippa, Poydras, Circus and Perdido streets.

And your orator and oratrix further show, that Francois Xavier Martin and J. Hopkins, each, claims to hold severally as owner or otherwise, some portion, piece or parcel of the third above described and enumerated piece, parcel or tract of land situated in the parish of New Orleans, on the right hand side of the Gentilly road, on going towards Gentilly, from the city of New Orleans, being twenty-two arpents in front, (more or less) on the said Gentilly road, and that M. Binge occupies, or possesses some portion, piece or parcel thereof; that Réné Lemonier occupies and possesses, and claims to hold as owner or otherwise, the fourth above described and enumerated lot of land, with the buildings and tenements thereunto belonging, known and distinguished as lots, numbers 184 and 186, in Royal street, in the city of New Orleans; that F. H. Petitpain and Toledano, claim to hold, severally or jointly, as owners or otherwise, some piece or portion of the fifth above described and enumerated three

lots of land adjoining together, and forming but one piece or parcel of land on the southerly corner of the square of ground in the city of New Orleans, bounded by Toulouse, Rempart and St. Peter and Burgundy streets, and each lot being about sixty feet front, and one hundred and twenty feet deep; and that Etienne Cusin, J. H. Field, P. O. Sorbe, Claude Samory and Toledano, severally occupy and possess the same.

And your orator and oratrix also show, that the Mayor, Aldermen and Inhabitants of the city of New Orleans, claim to hold, as owners or otherwise, the sixth above described and enumerated piece, parcel or tract of land situated in the quarter of the bayou St. John, and containing about one hundred and thirty-five arpents, superficial measure, be the same more or less; that Augustus Pepie and one Wright, occupy and possess, jointly and severally as owners or otherwise, the tenth above described and enumerated piece, parcel or square of land in the suburb St. John, of the city of New Orleans, known and designated as square No. 4 on the said plan of the said suburb. And your orator and oratrix further show, that Gabriel Winter occupies and claims to hold, as owner or otherwise, the eleventh above described and enumerated plantation, or tract of land situated on the right bank of the Bayou Lafourche, opposite the town of Donaldsonville, and measuring eleven arpents in front, on the Mississippi, and twenty-nine arpents on the said Bayou Lafourche, be the same more or less; that Philip Miner, Geo. Kenner, and Duncan Kenner, claim to hold and to be entitled to as joint or several owners or otherwise, the above twelfth described and enumerated tract of land purchased by the said Daniel Clark of William Sampson, as hereinbefore stated, and which is situated in the parish of Ascension and county of Acadia, on the left bank of the Mississippi, measuring in front on said Mississippi river, eighteen and one half arpents, and extending back from said Mississippi in depth forty arpents, and that the said George Kenner and Duncan Kenner occupy the same. And also, that Leland Ferier occupies and possesses, and claims to hold as owner or otherwise, the thirteenth above described and enumerated lot, piece, or parcel of land in the city of New Orleans, in the square bounded by Delord street, Tivoli place, St. Charles street, St. Joseph street and Camp street.

And your orator and oratrix further show unto this honorable court, that Francois Dusuau de la Croix, on or about the 11th day of October, 1813, being after the death of the said Daniel Clark, took possession of, and has ever since held and retained, or disposed of for his own use and benefit, the following named twenty slaves, the property of the said Daniel Clark, and has enjoyed the profits and services of the same, that is to say, the slaves named Meroke, Phœbe, Flibo Thom, John Jamboun, Fanny, Wallace, Leven, John, Wury, Esther, James McCall, Hannah, Phil, Betsey, Monsin, Esther Morning, Cambridge, Rachal—and that the said François Du-

suau de la Croix did also, on about the 11th day of December, 1813, take possession of, and has ever since held and retained, and has enjoyed the services and profits, or has disposed of for his own use and benefit, the following named fifty-five slaves, that is to say, Solomon, a negro man aged 40 years, Jacob 25 years, Jacques 18 years, Paul 22 years, Randolph 30 years, Ned 30 years, Isaac 20 years, Austin 25 years, Janin 16 years, Charles 35 years, Davis 20 years, Brice 40 years, Tom 35 years, Bob 26 years, Haly 30 years, Harry 15 years, Coxe 40 years, Sam 40 years, Janvier 40 years, Rose 25 years, Peter 45 years, Chloe 30 years, Morrow 35 years, George ten years, Sam 40 years, Gian 10 years, Elisah 18 years, Spencer 44 years, Theimar 25 years, Betty 26 years, George, mulatto, 30 years, Dorianna Smith 16 years, Little Winny 20 years, Judith 25 years, Darse or Dive five years, Ben 26 years, Jack 25 years, Mary 30 years, Joe 15 years, Sukey 12 years, Victoire 10 years, Joe 13 years, Davis 30 years, John Harrod 25 years, Wallis 30 years, Andre 40 years, Squire child, Tom child, Davis child, Ann child, Gabrial and George 10 years.

And your oratrix further shows unto this honorable court, that Celestin Robert Avart, soon after the time of the death of the said Daniel Clark, and on or about the 8th day of October, 1813, took possession of and has ever since held and retained, or disposed of for his own use and benefit, *of* the following named five slaves, owned by the said Daniel Clark, and has enjoyed the services and profits of the same, that is to say, the slave Molly aged 46 years, Nancy aged 28 years, Kery aged 12 years, Thom aged 8 years, and Isaac aged 22 years; that L. Fortier, soon after the death of the said Daniel Clark, and on or about the 11th day of October, 1813, took possession of, and has ever since held and enjoyed the services and profits of, or disposed of for his own use and benefit, a slave owned by the said Daniel Clark, and named Patience; that François Pascalis Labarre, on or about the 11th day of October, 1813, took possession of, and has ever since held and retained, and received and enjoyed the services and profits of, or disposed of for his own use and benefit, two slaves owned by the said Daniel Clark, named Sally, aged 16 years, and Betty aged 15 years; that Soniat Dufussat, on or about the 18th day of October, 1813, took possession of, and has ever since held and retained, and received and enjoyed the services and profits of, or disposed of for his own use and benefit, six slaves owned by the said Daniel Clark, and named Sam Harris aged 26 years, Rachal 25 years, George 8 years, James 6 years, Champion 1 year and Fanny 22 years; that Louis Desdunes fils, on or about the 21st day of October, 1813, took possession of, and has ever since held and retained, and received and enjoyed the profits and services of, or disposed of for his own use and benefit, one slave the property of the said Daniel Clark, named and aged 16 years; that Herbert Fortier, on or about the 23d day of October, 1813, took possession of, and has ever since held and retained, and received and enjoyed the services and profits of, or disposed of for his own

use and benefit, three slaves, the property of the said Daniel Clark, and named Jenny aged 26 years, Kitty aged 5 years, and Henrietta aged 8 years; and your orator and oratrix show unto this honorable court, and expressly charge, that the said last named ninety-one slaves were the sole and absolute property of the said Daniel Clark, and were owned by him at the time of his decease.

And your orator and oratrix also show unto this Honorable Court, and expressly charge, that the said Mrs. Holliday, John Holliday, Jean B. Ambroise, Ramon Masona, John Minturn, Belifine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, The New Orleans and Carrollton Rail Road Company, Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Cartano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francis Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, "The Mayor, aldermen, and inhabitants of the city of New-Orleans," Toledano, EtienneCusin, J. H. Field, P. O. Sorbet, Claude Samory, Augustus Pepie, Mr. Wright, Gabriel Winters, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, François Dusuau de la Croix, Celestine Robert Avart, L. Fortier, Francis Pascalis Labaire, Soniat Dufossat, Louis Desdunes fils, and Hobert Fortier, do each respectfully hold, occupy, possess or claim to the several plantations, lots, pieces or parcels of land, slaves and personal estate by them respectively held, occupied, possessed or claimed, as your orator and oratrix have hereinbefore set forth, by, under color (and not otherwise) of a pretended title founded upon divers illegal, fraudulent, improper and invalid sales of the said plantations, lots, pieces or parcels of land, slaves and personal estate, by them or each of them respectively held, occupied, possessed or claimed as aforesaid, made by the said Richard Relf and Beverly Chew, or one of them, as pretended executors of the said Daniel Clark, or pretended attorneys of the said Mary Clark, or otherwise; and that they have severally enjoyed or received for a long space of time the rents, services, profits, and issues of the said plantations, lots, pieces or parcels of land, slaves and personal property, by them and each of them respectively held, occupied, possessed or claimed as hereinbefore specified.

And your orator and oratrix further show unto this Honorable Court, and expressly charge, that the said Richard Relf and Beverly Chew, or one of them, did also immediately upon the death of the said Daniel Clark possess themselves of all and every of the books and papers of the said Daniel Clark, and of the title deeds of his real estate and other estates.

And your orator and oratrix also show to this Honorable Court, and expressly charge that your oratrix, the said Myra Clark Whitney, was the only surviving child or descendant of the said Daniel

Clark, at the time of his death, and that your oratrix, the said Myra Clark Whitney, was upon the death of the said Daniel Clark entitled as his forced heiress at law, and his universal heiress by him instituted and appointed in his said last will made by him in 1813, to all the estate, real and personal, of the said Daniel Clark; and your orator and oratrix also show unto this Honorable Court, and expressly charge, that inasmuch as your oratrix, the said Myra, was the only surviving and legitimate child or descendant of the said Daniel Clark, at the time of his, the said Daniel Clark's death, and inasmuch as the said last will of the said Daniel Clark, made by him as aforesaid in 1813, was fraudulently concealed, suppressed or destroyed by the said Richard Relf as above stated, and also inasmuch as the said old revoked will of 1811, alleged to have been made by the said Daniel Clark, in favor of his mother, the said Mary Clark, was produced and procured to be admitted to Probate as the last will of the said Daniel Clark, by such fraud and practice of the said Richard Relf, as is hereinbefore stated; that for, and notiwthstanding the same, the said real and personal estate of the said Daniel Clark, hereinbefore described and enumerated, and all other estates, real and personal, movable and immovable, of the said Daniel Clark, descended to, and became vested in your oratrix, the said Myra Clark Whitney, as the forced heiress at law and universal devisee of the said Daniel Clark.

And your orator and oratrix show further unto this Honorable Court, that they, or some person or persons for them, have made frequent applications to the said Eleonor O'Bearne, Jane Green and her husband, George Green, Sarah Campbell, Richard Relf and Beverly Chew, Holliday, John Holliday, Ramon Masona, Jean B. Ambroise, John Minturn, Belefine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, "The New-Orleans and Carrollton Rail Road Company," "The Mayor, Aldermen and inhabitants of the city of New-Orleans," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Cartano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, François Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, Augustus Pepie, Mr. Wright, Gabriel Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau De la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes fils, and Herbert Fortier, respectively to surrender and deliver up to your oratrix, the said Myra Clark Whitney, the possession of such portion of the real and personal estate, and slaves owned by the said Daniel Clark, at the time of his decease, as is by them or each of them respectively held, occupied, possessed or claimed as owner or otherwise, together with all title deeds, vouchers and documents relating to the same or any part thereof,

and severally to come to a just and true account with your orator and oratrix, for the rents, profits, issues and services thereof respectively, which have been received or enjoyed by them or either of them, at any time since the death of the said Daniel Clark, with which just and reasonable requests your orator and oratrix had well hoped the said defendants would have respectively complied, as in justice and equity they ought to do.

But now, so it is, may it please this Honorable Court, that the said Eleonor O'Bearne, George Green and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Massana, Jean B. Ambroise, John Minturn, Belifine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Calloway, Jean Barabino, Antoine Piernas, "The New-Orleans and Carrolton Rail Road Company," Mrs. Widow Jaubert, Charles Patterson, Charles Fond, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francis Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H.Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "The Mayor, Aldermen and inhabitants of the city of New-Orleans," Augustus Pepie, Mr. Wright, Gabrial Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufassat, Louis Desdunes fils, and Herbert Fortier, and to, and with divers other persons at present unknown to your orator and oratrix, whose names when discovered your orator and oratrix pray may be herein inserted, and they made parties defendants hereto, with proper and apt words to charge them with the premises, and contriving how to injure and oppress your orator and oratrix in the premises, some time give out and pretend that the said Daniel Clark never did make and execute the said will of 1813, in favor of your oratrix, as has been above stated, and that the said old will of 1811 was duly made and executed by the said Daniel Clark, and was left by him at the time of his decease unrevoked, and as his true and only last will and testament, whereas your orator and oratrix expressly charge the contrary of said pretence to be true, and that the said Daniel Clark did make and execute the said will made by him as hereinbefore stated, in the year 1813, in favor of your oratrix, and did therein devise and bequeath all his estate, real and personal, to your oratrix, the said Myra Clark Whitney, and did also therein and thereby declare your oratrix, the said Myra Clark Whitney, to be the legitimate daughter of the said Daniel Clark, and did make and order therein the other dispositions and bequests hereinbefore stated by your orator and oratrix, to have been made and ordered by him in the said will made and executed as aforesaid, in 1813, by him the said Daniel Clark; and the said will of 1813 operated as a full and perfect revocation of the former will, alleged to have been made by the said Daniel Clark in

1811, and of every part and provision thereof; and that the said will ought to be set aside, and the will of 1813 established and confirmed, and the real and personal estate of the said Daniel Clark declared to be descended to your oratrix, the said Myra Clark Whitney, as the heir at law and devisee of the said Daniel Clark. And at other times the said confederates will allege that some doubts have arisen concerning the legitimacy of your oratrix, the said Myra Clark Whitney, and pretend that the said Daniel Clark was never married to Zuline Née Carriere, by whom he had your oratrix, the said Myra Clark Whitney, and that the said Zuline Née Carriere was the lawful wife of one Jerome DeGrange, who was still living when she became the mother of your oratrix by the said Daniel Clark, and that therefore, upon the death of the said Daniel Clark, the equitable and legal interest in all the said real and personal estate and slaves, descended to and became vested in the said Mary Clark as his forced heir at law; whereas your orator and oratrix expressly charge the contrary of all such pretences and allegations to be true, and that your oratrix, the said Myra Clark Whitney, is and was the legitimate child of the said Daniel Clark, and that the said Daniel Clark was married to and was the lawful husband of the said Zuline Née Carriere, at and before the time when she became the mother of your oratrix, the said Myra, by the said Daniel Clark, and that the said Zuline Née Carriere was not and never had been at any time the lawful wife of the said Jerome DeGrange, or of any other man than the said Daniel Clark, when she became the mother of your oratrix, the said Myra as aforesaid, and that any marriage ever did take place between the said Zuline and the said DeGrange, the same was utterly null and void, from the beginning, on the ground that the said Jerome DeGrange at the time of his contracting such marriage (if he did contract the same) with the said Zuline, was the lawful wedded husband of another woman, to whom he had been previously married and who was still living, all of which the said confederates will at other times admit. But then they pretend that the said Richard Relf and Beverly Chew made sales of the said real and personal estate, and the said slaves of the said Daniel Clark, as testamentary executors of a will of the said Daniel Clark, which had been admitted to probate in the probate court for the parish and city of New-Orleans, and as the attorneys in fact of the said Mary Clark, the devisee, in said probated will named, and that the purchasers of the said real and personal estate of the said Daniel Clark, at the said sales thereof, did become such purchasers for full and valuable considerations, and without notice of any revocation and invalidity of the said probated will, alleged to have been made by the said Daniel Clark, in 1811, and in which the said Richard Relf and Beverly Chew were named executors, and without notice of the rights or claims of any other person than the said Mary Clark to the said estate of the said Daniel Clark, or any part thereof; and therefore they insist that

although the said will of 1811 may not have been the last will of the said Daniel Clark, and although your oratrix, the said Myra, may have been the true and lawful heiress of the said Daniel Clark, yet they should not be affected thereby, and that the titles acquired by the said purchasers under the said sales made of the said real and personal estate and slaves of the said Daniel Clark, by the said Richard Relf and Beverly Chew, are good and perfect titles, and cannot be invalidated or disturbed in any manner by the revocation or invalidity of the said will of 1811, or of any claim or claims or title which your said oratrix, the said Myra, may have had or now has to the said estate and slaves, or any portion thereof; whereas your orator and oratrix expressly charge the contrary of all such pretences to be true, and that the said Richard Relf and Beverly Chew did not, nor did either of them act in their said assumed capacities of pretended executors of a will of the said Daniel Clark, and attorneys of the said Mary Clark legally, nor did they or either of them, when acting in both or either of such assumed capacities, observe or comply with the formalities or adopt the measures prescribed by law as requisite to give any validity or authority to any act or acts done or assumed to be done by them in such assumed capacities of executors or attorneys, in relation to the said real and personal estate and slaves of the said Daniel Clark—that a true and faithful inventory, and a just appraisement by two duly appointed and sworn appraisers of the said real and personal estate of the said Daniel Clark, had not been made or caused to be made according to law, by the said Richard Relf and Beverly Chew, or either of them, before the said sales were made—that proper and legal orders to sell were not obtained by the said Richard Relf and Beverly Chew, or either of them, from the judge authorised to grant or make such orders, before the said sales were made—that all or nearly all the said sales were made by private contract and not at public auction, as they should according to law have been made—and that the monies severally paid by the said purchasers for the portions sold to them respectively, of the said real and personal estate and slaves, by the said Richard Relf and Beverly Chew, or either of them, were not respectively full and valuable considerations for said portions of said real and personal estate and slaves; that many of said sales were made by the said Richard Relf and Beverly Chew as pretended testamentary executors after the year of testamentary execution had expired, and when they had not, nor had either of them been continued by the order of any judge or court of competent authority, in their said functions of executors—that the said Richard Relf and Beverly Chew had not, nor had either of them caused themselves, or either of them, to be duly recognized by a court of competent authority as the attorney or attorneys of the said Mary Clark, and that all acts of the said Richard Relf and Beverly Chew in relation to the estate of the said Daniel Clark, were upon the face of the proceedings in the

foregoing and many other respects illegal and informal, and fraudulent and void by the laws of the land, and so they were necessarily known to be by the said purchasers at the said sales—and that the making, execution, and existence of the said last will of the said Daniel Clark, made by him in 1813, and its fraudulent concealment, suppression and destruction at his death, by the said Richard Relf, were notoriously known and reported at the time in Louisiana, and that the said purchasers on the occasion of the making of the sales aforesaid and afterwards, and their heirs and assigns, had some knowledge, notice, information, belief or suspicion, or reason for belief or suspicion, and did in their consciences believe or suspect that the said Richard Relf and Beverly Chew had acted fraudulently, improperly and against equity and good conscience, in procuring to be admitted to probate the said will alledged to have been made by the said Daniel Clark in 1811, and in having procured the appointment of themselves, the said Richard Relf and Beverly Chew, by the Probate court, as executors of the said will of 1811, and representing the said real and personal estate of the said Daniel Clark to have been devised to and inherited by the said Mary Clark—all which the said confederates will at other times admit, and then they will pretend that they have delivered and sent to your orator and oratrix full, true and just accounts of the said real and personal estate and slaves of the said Daniel Clark, and all of the rents, profits, issues and services thereof, and of all the business or concerns appertaining or relating thereto; whereas your orator and oratrix expressly charge the contrary of such pretence to be true, and that the said confederates have not, nor has either of them, dellvered or sent to your orator and oratrix, or either of them, any account whatever; all of which actings and doings and pretences tend to the manifest wrong and injury of your orator and oratrix, and are contrary to equity and good conscience.

In tender consideration whereof, and for as much as your orator and oratrix are remediless in the premises by the strict rule of the common law, and are unable to obtain adequate and complete relief, except on the equity side of this honorable court, where matters of this and the like nature are alone properly cognizable and relievable; and your orator and oratrix expressly charge, that the said Eleonor O'Bearné, George Green and Jane Green, his wife, and Sarah Campbell, if now living, are aliens and subjects of the King of Great Britain and Ireland, and that Richard Relf and Beverly Chew, Holliday, John Holliday, Ramon Masona, Jean B. Ambroise, John Minturn, Belifine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, The New Orleans and Carrollton Rail Road Company, Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francis Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F.

H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "the Mayor, Aldermen and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabriel Winters, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestine Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes fils, and Herbert Fortier, are citizens of the State of Louisiana, and that your orator and oratrix are citizens of the State of New York.

To the end, therefore, that the said Eleonor O'Bearne, George Green and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Masona, Jean B. Ambroise, John Minturn, Belefine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrollton Rail Road Company," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, François Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "the Mayor, Aldermen and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabriel Winters, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes fils, and Herbert Fortier, and the rest of the confederates, when discovered, may, without oath, full, true, direct and perfect answer make; your orator and oratrix hereby expressly waiving the necessity of making such answer upon the oath of the said confederates, or of either of them, to all and singular, the matters and things hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they and each of them thereunto distinctly and specifically interrogated; and that not only as to the best of their, and each of their, *and each of their* respective knowledge and remembrance, but also to the best of their respective information, hearsay and belief; and that the said confederates may also severally set forth, what right, title or interest they respectively have or claim, in or to the real estate and slaves of the said Daniel Clark, or any and what part thereof, and how and in what manner they derive and make out the same, and by and under what deed or deeds, writing or writings, and may set forth the date and contents of all such deeds and writings, and that the said Eleonor O'Bearne, George Green and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Masana, Jean B. Ambroise, John Minturn, Belifine Berdoule, Manuel Marquez, John Mathieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrollton Rail Road Company," Mrs. Widow Jaubert,

Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchinette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francois Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "the Mayor, Alderman and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabriel Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes fils, and Herbert Fortier, and the rest of the confederates, may answer the premises; and that the said will, made by the said Daniel Clark in the year 1813, in which he devised all his estate as aforesaid to your oratrix, the said Myra, and the provisions and dispositions thereof, be carried into execution, by and under the decree of this Honorable Court, and the rights and interests of your orator and oratrix under the same be declared and secured; and that it may be declared that the said will, alledged to have been made by the said Daniel Clark in 1811, had been utterly revoked and declared to be good for nought by him, the said Daniel Clark, in his lifetime, and that the said will so alleged to have been made by the said Daniel Clark in 1811, is in fact, and in truth, utterly void and of no effect—and that the said will made as aforesaid, by the said Daniel Clark in 1813, was duly made and executed by him, the said Daniel Clark, with all the formalities and other requisites necessary for passing real and personal estate by devise, and that it was the only true and valid will of the said Daniel Clark, and contained a good and valid devise and bequest of all the real and personal estate and slaves of the said Daniel Clark to your oratrix, the said Myra Clark Whitney; and that in and by the same, he the said Daniel Clark did acknowledge and declare your oratrix, the said Myra Clark Whitney, to be the legitimate daughter of him, the said Daniel Clark, and that the said Daniel Clark departed this life on or about the 16th day of August, 1813, wiihout altering or revoking his said will so made by him as aforesaid, in the year 1813, and containing the said devise to, and the said declaration of acknowledgment of the legitimacy of your oratrix, the said Myra Clark Whitney, and that the said declaration or acknowledgement of the legitimacy of your oratrix, the said Myra, made as aforesaid, by the said Daniel Clark, in his last will made by him in the year 1813, was a full and perfect, and effectual act of legitamation of your oratrix, the said Myra Clark Whitney, if any such act would have been necessary to establish the legitimacy of your oratrix, the said Myra, and that it vested in your oratrix all the rights, capacities and privileges of a legitimate child—and also, that it may be declared that your oratrix, the said Myra, is the legitimate child of the said Daniel Clark, and that the said Daniel Clark was the lawful husband of the said

Zuline Née Carriere, the mother of your oratrix, the said Myra, at and before the time when she, the said Zuline, became the mother of your oratrix, the said Myra, by the said Daniel Clark; and that it may be declared, that all and every of the said sales of the said real and personal estate, and the said slaves of the said Daniel Clark, made by the said Richard Relf and Beverly Chew, or by either of them, as the executor or executors of the said revoked will of 1811, or as the attorney or attornies of the said Mary Clark, or in any other capacity, are null and void, and of no effect, and that the said real and personal estate, and slaves of the said Daniel Clark, descended to your oratrix, the said Myra, upon the death of the said Daniel Clark, as his the said Daniel Clark's devisee and heir at law, and that the said Eleonor O'Bearne, George Green and Jane Green, his wife, Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Masona, Jean B. Ambroise, John Minturn, Belifine Berdoule, Manuel Marquez, John Mathieu, Thos. D. Hailes, Mr. Calloway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrollton Rail Road Company," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchinette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francois Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, "the Mayor, Aldermen and inhabitants of the city of New Orleans," Augustus Pepie, Mr. Wright, Gabriel Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Desuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes fils, and Herbert Fortier, may be decreed to deliver up to your orator and oratrix, the possession of all the said real estate and slaves hereinbefore enumerated and described, and now held and possessed or claimed to be held and possessed by them or either of them, jointly or severally, or in any other manner, as owners or otherwise, and to come severally to an account with your orator and oratrix, for the rents, profits, issues and services of the said real estate and slaves of the said Daniel Clark, which have been possessed or received by the said defendants, or any of them, or by any other person or persons, by their or either of their order, or for their or either of their use, since the death of the said Daniel Clark, and respectively to pay over to your oratrix, whatever shall be found due from them or any of them, upon the taking of such account, and that in the taking of such account, the said defendants may respectively be charged with interest for such balances as shall appear to have been in their hands from time to time, and that the said defendants may be respectively decreed to deliver up to your orator and oratrix all deeds and other writings in their hands, relating to the said real and personal estate and slaves of the said Daniel Clark,

and that an account may also be taken of the personal estate and effects of the said Daniel Clark, and the profits, issues and profits thereof, possessed or received by, or by the order of, or for the use, or which may have come to the hands of the said Richard Relf and Beverly Chew, or either of them, as said executors of the said revoked will of 1811, or as said attorneys of the said Mary Clark, or by *or by* the order, or for the use, or which may have come to the hands of any other of the confederates, and that the said Richard Relf and Beverly Chew, and the rest of the confederates, may be respectively decreed to pay to your orator and oratrix, what shall be found due from them, or any of them, on account of the said said personal estate and effects of the said Daniel Clark, and that your orator and oratrix may have such further or other relief in the premises as the nature of the case may require, and as may seem meet to this Honorable Court and agreeably to equity and good conscience.

May it please this honorable court, the premises considered, to grant unto your orator and oratrix the people's most gracious writ of subpœna, issuing out of, and under the seal of this honorable court, to be directed to the said Eleonor O'Bearne, George Green and Jane Green, his wife, and Sarah Campbell, Richard Relf, Beverly Chew, Holliday, John Holliday, Ramon Masana, Jean B. Ambroise, John Minturn, Belifine Berdoule, Manuel Marquez, John Matthieu, Thomas D. Hailes, Mr. Callaway, Jean Barabino, Antoine Piernas, "the New Orleans and Carrollton Rail Road Company," Mrs. Widow Jaubert, Charles Patterson, Charles Fonde, Mrs. Widow P. Mitchell, Sarah M. Alexander, Antoine Caitano, B. Doyle, Mrs. West, Virginia Duplantier, Claude Gauchanette, Patrick Hogan, J. B. Barker, Jane McCrea, Marie Louise, Charles Edwards, Francois Xavier Martin, J. Hopkins, M. Binge, Réné Lemonier, F. H. Petitpain, Toledano, Etienne Cusin, J. H. Field, P. O. Sorbet, Claude Samory, the Mayor, Alderman and inhabitants of city of New Orleans, Augustus Pépie, Mr. Wright, Gabriel Winter, Philip Minor, George Kenner, Duncan Kenner, Leland Ferier, Francis Dusuau de la Croix, Celestin Robert Avart, L. Fortier, Francis Pascalis Labarre, Soniat Dufossat, Louis Desdunes fils, and Herbert Fortier, and their confederates, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear, according to law and the course of practice in this Honorable Court, before the honorable the Judge of the District Court of the United States, for the Eastern District of Louisiana, then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein, as to this Honorable Court shall seem meet.

And your orator and oratrix, as in duty bound, will ever pray, &c.

(Signed) JAMES W. WHITE,
Solicitor for Complainants.

(Signed) T. W. COLLENS, *Dep. Clk.*

CLERK'S OFFICE, U. S. CIRCUIT COURT,
9th Circuit Eastern District of Louisiana.

I hereby certify the foregoing to be a true copy of the original on file in this office.

Witness my hand and the seal of the Court this 2d day of [L. S.] July, 1841.

DUNCAN N. HENNEN, *Clk.*
By H. B. PAGE, *Dy. Clk.*

Filed 28th July, 1836.

Demurrer of Barnes and Wife.

UNITED STATES OF AMERICA,
Circuit Court thereof, being the 9th Circuit holden at New Orleans in and for the eastern district of Louisiana.

EDMOND P. GAINES AND WIFE, Compt's.
vs.
CHEW, RELF, AND BARNES AND WIFE, and others, defend'ts.
} In Equity, April Term, 1841.

The demurrers of John Barnes and Caroline Barnes, (and not Caroline de Grange, as she is erroneously named in the subpœna,) his wife, whom the complainants irregularly attempted to make parties to this suit, by their amended bill filed in this Hon. Court on the day of April, 1840, and while the said suit was pending and undecided in the Supreme Court of the United States, but who have now in their proper names voluntarily come and entered their appearance as parties defendants to the original and amended bills, in opposition to the original and amended bills of Edmond P. Gaines and wife.

1st. Want of Equity.

These defendants, by protestation, not confessing all or any of the things in the said complainants' bill and amended bills contained, to be true in such manner and form as the same are therein set forth and alledged, do demur to the said bill and amended bills, and for cause of demurrer shew, that the said complainants have not, by their said bill and amended bills, made such a case as entitles them in a Court of Equity to any discovery from these defendants respectively, or either of them, or to any relief against them or either of them, as to the matters contained in the said bill or amended bills, or any of such matters, and that any discovery which can be made by these defendants or either of them, touching the matters

complained of in the said bill or amended bills, or any of such matters, cannot be of any avail to the said complainants for any of the purposes for which a discovery is sought against these defendants, by the said bill and amended bills, nor entitle the said complainants to any relief in this Court touching any of the matters therein complained of—wherefore and for divers other good causes of demurre, appearing in the said bill and amended bills, these defendants do demur thereto, and they pray the judgment of this Honorable Court, whether they shall be compelled to make any other and further answer to the said bill and amended bills, and they pray the judgment of this Hon. Court, whether they shall be compelled to make any other and further answer to the said bill and amended bills, and they humbly pray to be dismissed from hence with their reasonable costs in this behalf sustained—and for further cause of demurrer, they shew

2nd. Complete Remedy at Law.

And furthermore these defendants, by protestation, not confessing all or any of the matters and things in the said complainants' bill and amended bills contained, to be true in such manner and form as the same are therein set forth and alledged, do demur to the said bill and amended bills, and for cause of demurrer shew that the said complainants have not by their said bill and amended bills, made such a case as entitles them, in a Court of equity, to any discovery from these defendants respectively, or either of them, or to any relief against them or either of them, as to the matter contained in the said bills or amended bills, or any of such matters.

And these defendants further say that the complainants' said bill of complaint and the amended bills, and the allegations of each, in case the same were true, which these defendants do in no wise admit, entitle them (the complainants) under the laws of Louisiana, to as plain, complete and adequate a remedy at law, both as to discovery and relief, as this Honorable Court of equity could or can administer in the premises. Wherefore, and for divers other good causes of demurrer, appearing in the said bill and the amended bills, these defendants do demur thereto, and they pray the judgment of this Hon. Court whether they shall be compelled to make any other and further answer to the said bill and amended bills, and they humbly pray to be dismissed from hence with their reasonable costs in this behalf sustained.

3rd. Multifariousness and Misjoinder.

And furthermore these defendants, by protestation, not confessing all or any of the matters and things in said complainants' bill and amended bills contained, to be true in such manner and form as the same are therein set forth and alledged, say that they are

advised by their counsel that the complainants' said bill and amended bills are insufficient, and to which, by the rules of this Honorable Court, these defendants ought not to be compelled to make or give any answer, and for cause of demurrer thereto, these defendants shew, that it appears by the said bill and amended bills, that the same are exhibited against these defendants, and the original bill against Beverly Chew and Richard Relf, and sundry other defendants, for several distinct matters and causes, in many whereof, as appears by the said bills, these defendants are not in any manner interested or concerned, by reason of which distinct matter, the said complainants' said bill of complaint is drawn out to a considerable length, and these defendants are compelled to take a copy of the whole thereof, and by joining these defendants and distinct matters together, which do not depend on each other in the said bill of complaint, the pleadings, orders, and proceedings will, in the progress of the said suit, be intricate and prolix, and tend to great delays; and these defendants will be put to the unreasonable and unnecessary charges in taking copies of such pleadings, orders and other proceedings, although they do not, and will in no ways relate to, or concern them—for which reason, and for divers other errors appearing in the said bill and amended bills, these defendants do demur thereto, and they pray judgment of this Honorable Court, whether they shall be compelled to make any other or further answer to the said bill and amended bills, and they humbly pray to be dismissed from hence with their reasonable costs on this behalf sustained.

4th. The will of 1813 not probated.

And furthermore these defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint and the amended bills, to be true, in such sort and manner as the same are therein expressed and contained; as to so much and such parts of the said bill and amended bills as seek discovery and relief of these defendants, by virtue of a will of the said Daniel Clarke, (if any such were made,) which the complainants allege to have been made by him in the year 1813, and which they seek to set up and establish, by their said bills, as the true and last will and testament of the said Daniel Clark; these defendants do demur thereunto, and for cause of demurrer show that it is no where alleged in the said bill, or the amended bills, that said will (if any such was made) has been admitted to probate by any court of competent jurisdiction in the premises, or by the Court of Probates of the city and parish of New Orleans and State of Louisiana, which these defendants are advised possesses the exclusive power to admit to probate such a will, and to give the same effect in the State of Louisiana, under the laws thereof; nor have the said complainants alleged that they had the said supposed will

admitted to probate elsewhere, or taken upon themselves, nor have the executors alleged to have been named in said will, or either of them, taken upon themselves the burthen and execution of the said supposed will, nor have the said complainants shown by any ways that they were entitled to the property of the said Daniel Clark, and had a right to sue for the same by virtue of the said supposed or of any other will. Wherefore, and for divers other good causes of demurrer appearing in the said bill and the amended bills, these defendants do demur thereto; and they pray the judgment of this Honorable Court, whether they shall be compelled to make and other and further answer to the said bill and amended bills; and they humbly pray to be dismissed from hence, with their reasonable costs in this behalf sustained.

5th. Forced Heirship gives title but to 1-3, and Courts of Law competent.

And furthermore these defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint and the amended bills, to be true, in such sort and manner as the same are therein expressed and contained; as to so much and to all such parts of the said bill and the amended bills as seek discovery and relief of these defendants, and a revocation of the will of the month of May, 1811, alleged by the bill to have been made by the said Daniel, and afterwards admitted to probate; by virtue of the allegations of the said bill, that the complainant, Myra, was and is the legitimate and only daughter of the said Daniel Clark, and as such entitled as forced heir to the whole of the estate left at his death; these defendants do demur thereto, and for cause of demurrer show that it is alleged in the said bill, that in the will of 1811 the said Daniel Clark instituted his mother, Mary Clark, the only heir to his estate; and these defendants are advised that if these matters are true, that the said Daniel Clark had a right to institute the said Mary Clark his heir to two-thirds of his estate, and that the complainants have no right, under the facts stated, to claim and sue for more than an undivided third part of the said Daniel Clark's estate; and these defendants do further demur, and for cause of demurrer show, that, taking it for true, as alleged in the said bill, that said Myra is the legitimate and only child of the said Daniel Clarke, these defendants are advised that all the rights resulting therefrom can be readily enforced in a court of law, where the remedy would be, and is plain, adequate and complete, and that the Judges of this Honorable Court, sitting at a Court of Common Law, under the rules of practice adopted by that court, or either the first district or parish courts, holden at New Orleans, in and for the parish and city and State thereof, are severally and respectively competent to administer the remedy aforesaid in the premises, as fully and completely as this Honorable Court can or will do.

Wherefore, and for divers other good causes of demurrer appearing in the said bill and other amended bills, these defendants do demur thereto; and they pray the judgment of this Honorable Court, whether they shall be compelled to make any other and further answer to the said bill and *and* amended bills, and they humbly pray to be dismissed from hence with their reasonable costs in this behalf sustained.

6th. Not alleged to be a Corporation.

And furthermore these defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint and the amended bills, to be true, in such sort and manner as the same are therein expressed and contained; as to so much and such parts of the said bill, and amended bills, as seek discovery and relief of these defendants, conjointly with the New Orleans and Carrolton Railroad Company, these defendants demur, and for cause of demurrer show that it is no where alleged in the said bill, or amended bills, that the New Orleans and Carrolton Railroad Company are a corporation, and duly empowered, as such, to sue and be sued, and plead and be impleaded, or, if so, what is their corporate name; nor is it alleged in the said bill, or amended bills, that each and every member of the said company is or was, at the time of the institution of this suit, a citizen of the State of Louisiana, and liable, by reason thereof, to the jurisdiction of this Honorable Court.

Wherefore, and for divers other good causes of demurrer appearing in the said bill and the amended bills, these defendants do demur thereto; and they pray the judgment of this Honorable Court, whether they shall be compelled to make any other or further answer to the said bill and amended bills; and they humbly pray to be dismissed from hence, with their reasonable costs in this behalf sustained.

(Signed) BARTON & ROSELIUS,
Solicitors for John Barnes and wife.

Clerk's Office, Circuit Court United States, Ninth Circuit Eastern District of Louisiana.

I certify the foregoing to be a true copy from the original on file in this court.

Witness my hand and the seal of the court, at New Orleans,
[L. S.] this second day of July, in the year of our Lord one thousand, eight hundred and forty-one.

DUNCAN N. HENNEN, *Clerk.*
By H. B. PAGE, *Dep'y Clerk.*

Demurrer of Chew & Relf.

Beverly Chew, Richard Relf & others, *vs.* Edmund P. Gaines and wife.	In Chancery.

Circuit Court of the United States, in and for the 9th Judicial Circuit, holding sessions in New Orleans, in the Eastern District of Louisiana.

The separate demurrer of Beverly Chew and Richard Relf, two of the defendants in the bill of complaint of Edmund P. Gaines, and Myra, styling herself Myra Clarke, his wife.

These two defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill contained, as true, in such manner and form as the same are therein and thereby set forth and alleged, do demur to said bill, and for cause of demurrer shew that the said complainants have not, by their said bill, made such a case as entitles them, in a court of equity, to any discovery from these defendants respectively, or from either of them, or to any relief against them, or against either of them, as to the matters contained in their said bill, or any such matters; and that any discovery which these defendants or either of them (not admitting that they can make any discovery) could make, touching the matters complained of in the said bill, cannot be of any avail to said complainants, for any of the purposes for which a discovery is sought against these defendants, by said bill, nor entitle said complainants to any relief in this court, touching any of the matters therein complained of; wherefore, and for divers other good causes of demurrer appearing on the bill, these defendants do demur, and pray the judgment of this honorable court, whether they or either of them shall be compelled to make any further answer to said bill, and they humbly pray to be hence dismissed, &c., &c.

And the aforesaid defendants, Beverly Chew and Richard Relf, by protestation, not confessing or acknowledging all or any of the matters and things set forth in the bill of the complainants, in manner and form as they are therein set forth, for further cause of demurrer to said bill, doth shew that it appears by the said bill, that the same is exhibited against these defendants and *forty-eight* others, therein named, for several distinct matters and causes, in many whereof, as appears by said bill, these defendants are not in any manner, nor is either of them in any manner interested or concerned; by reason of which distinct matters, said plaintiffs' said bill is drawn out to a considerable length, and these defendants, and

each of them, are compelled to take a copy of the whole thereof, and by joining distinct matters together, which do not depend upon each other in the said bill, the pleadings, orders and proceedings, will, in the progress of the said suit, be intricate and prolix, and these defendants put to unnecessary charges in taking copies of the same, although several parts in no way relate to or concern them or either of them, and in which they ought not to be implicated.

And for other and further cause of demurrer, the defendants, Beverly Chew and Richard Relf, by protestation, not confessing or acknowledging any of the matters or things therein contained, for other and further cause of demurrer shew, that the scope and end of the bill of complainants is to be relieved touching several sums of money, debts due, and real estate, by said bill supposed to be due by these defendants and others, or for which said bill seeks to make them liable, and to account to said complainants, and which said complainants would, by their bill, seek to have decreed to them, by virtue of, and in pursuance of, an alleged last will and testament of Daniel Clarke, deceased; and yet they, the said complainants, have not alleged, in or by their said bill, that they have proved the said alledged bill of the said Daniel Clarke, made in 1813, or that it has been in any manner probated by any competent authority whatever; or that they, the said complainants, have taken upon themselves the execution thereof. Wherefore, the said defendants demand the judgment of the court, whether they shall make further or other answer to said bill, &c.

And for further demurrer in this behalf, the aforesaid defendants to the complainants' bill shew, for cause of demurrer, that the said complainants, for any and for all of the matters and things in their bill made cause of complaint, have, by the laws of Louisiana, a full, complete and adequate and effectual remedy, in the courts of law, and on the law side of this honorable court, according to the known, usual and acknowledged common law of Louisiana, and under the codes and statutes passed and in full force, as laws in said State of Louisiana.

And by protestation, &c., for further cause of demurrer to the said bill, the said two defendants shew, that the complainants, by their aforesaid bill, do not in any manner shew or allege that the said Myra, one of the said complainants, is the only heir at law of the said Daniel Clark, inasmuch as it is nowhere in said bill alleged that the mother of the said Myra is not now living, and if she be, then, by the laws of Louisiana, she should have been made a party in interest, in the matters and things set forth in the said bill of complaint, as if she was living at the decease of said Clark; the said Daniel Clarke could not, even by will and testament, have *have* deprived her, the mother of said Myra, of her legal rights to one entire moiety, in fee simple, to his estate, real and personal.

And, by protestation, &c., the aforesaid two defendants, for other and further causes of demurrer to the said complainants' bill, *they*

shew, that by said bill it is set forth and alledged that the will of Daniel Clarke, made in 1811, has been admitted to probate in the court of probates in and for the parish and city of New Orleans, and that these two said defendants have been sworn and authorised by the said court of probates, as the testamentary executors of the said Daniel Clarke; wherefore said defendants submit for cause of demurrer, that this court cannot entertain jurisdiction in the premises, as set forth in said bill, while the probate of said will of 1811 remains in full force in the court of probates aforesaid, to whose jurisdiction and process, according to the shewing of said complainants in their bill, these two defendants are liable and responsible. Wherefore, the said defendants submit unto this honorable court, whether they shall be made to answer unto said complainants' said bill; and they, and each of them, hereby prays to be hence dismissed with costs.

And, by protestation, the said two defendants, Richard Relf and Beverly Chew, not confessing or acknowledging any of the allegations in the said bill of said complainants, as they are therein set forth, as true in manner and form as they are therein and thereby alleged, do demur to said bill, and show for other and further cause of demurrer, that the said complainants, by their said bill, seek to establish a will by them in said bill alleged to have been made by Daniel Clark, deceased, in the year 1813, under and by virtue of which the said camplainants set forth their right to recover the property in the said bill of said complainants described; and furthermore, said complainants, in this said bill, do seek to have a decree of this Honorable Court, by which itshall be adjudged and decreed, that a will by them in their bill alleged to have been made by said Daniel Clark, in 1813, "was duly executed by him, the said Daniel Clark, with all of the formalities and other requisites necessary for passing real estate and personal property by devise, and that it was the true and valid will of the said Daniel Clark, and contained a good and valid devise and bequest of all the real and personal estate and slaves of the said Daniel Clark, to the said complainant, Myra;" and that "the said Daniel Clark departed this life on the 16th day of August, 1813, without altering or revoking the said will," by them alleged to have been made in 1813. Wherefore these defendants, and each for himself, submits this Honorable Court cannot entertain jurisdiction in the premises of and concerning the matters and things in said bill of complaints contained, so far as said complainants seek to have a decree entered to establish a will of the late Daniel Clark, containing the clauses and bequests as by complainants in their bill alleged, or any other clauses whatever. Wherefore these defendants do demur, and pray the judgment of this Honorable Court, whether they or either of them shall be compelled to make any further answer to said bill, and humbly pray to be hence dismissed with their reasonable costs most wrongfully sustained.

And the said defendants, Richard Relf and Beverly Chew, and

each for himself, by protestation, not confessing or acknowledging any of the matters and things in the said bill, of the said complainants, as they are therein set forth, do demur to said bill and shew for cause of demurrer, that it is set forth in said bill, "that the said Daniel Clark, in the month of May, 1811, made a will, devising briefly and in general terms, his (said Daniel Clark's) property to his (Daniel Clark's) mother, Mary Clark, then residing out of the State of Louisiana, and also appointing" these two defendants, "Richard Relf and Beverly Chew, the executors thereof." And that the said will of the said Daniel Clark, made in 1811, "was admitted to Probate in the Probate Court, for the Parish and City of New Orleans." And that these two defendants, Beverly Chew and Richard Relf, and each of them, "were subsequently sworn as the testamentary executors of the said Daniel Clark, under the said" will of 1811. That the said defendants, Richard Relf and Beverly Chew, "took upon themselves the office of testamentary executors of said Daniel Clark," under the said will of 1811.

And that the said complainants, in their said bill, do not pretend or allege that the Probate of the will of said Daniel Clark, made in 1811, and the letters testamentary of the same, granted by the Court of Probates, in and for the Parish and City of New Orleans, unto each of these defendants, have ever been in any manner revoked or reversed. But that the intent and object of said complainants, by their said bill, is to obtain a decree, "declaring" and adjudging the will of Daniel Clark, "made in 1811, had been revoked and declared to be good for nought by him, the said Daniel Clark." And to decree the will of said Daniel Clark, made in 1811, "to be utterly void and of no effect." Whereby it is intended to obtain an order from this Honorable Court to avoid, annul and revoke the judgement and decrees of the Honorable the Court of Probates of the Parish and City of New Orleans, whereby the will of Daniel Clark, made in 1811, was Probated, and letters testamentary were issued and granted thereon to your petitioners; and to deprive the Court of Probates aforesaid of its jurisdiction in the premises. Wherefore the said two defendants, and each for himself, submits the aforesaid causes of demurrer to the bill of said complainants, or to so much thereof as seeks for a decree and relief by having the Probate of the will of Daniel Clark revoked, avoided and declared to be of non effect, and the letters testamentary with the said will annexed, granted to these two defendants, and to each of them, by the said Court of Probates, in and for the Parish and City of New Orleans. And they, and each of them, humbly submits unto this Honorable Court, whether they shall be bound to make any further answer unto said complainant's said bill, and they pray to be hence dismissed with their reasonable costs most wrongfully sustained.

(Signed) L. C. & G. DUNCAN,
Solicitors for Chew & Relf.

For and in behalf of the Widow Lambert, Luke Vigneau, Charles Fondé, Belfine Berdau, Antoine Piernas, John Mathieu, Ramon Masanas, and William Marquez, I join in the above demurrers for all the causes therein set forth.

(Signed) ISAAC PRESTON,
Solicitor for them.

On behalf of J. H. Field,
LOCKETT & MICER, *Solicitors.*

On behalf of Mrs. Maria Holliday and D. Delacroix,
LS. JANIN, *Solicitor.*

On behalf of the New Orleans and Carrollton Rail Road Company, of George and Duncan Kenner, and of John Minturn,
THOMAS SLIDELL, *Solicitor.*

CLERK'S OFFICE, CIRCUIT COURT OF THE UNITED STATES,
Ninth Judicial Circuit, Eastern District of Louisiana.

I certify the foregoing to be a true copy of the original on file in this office.

Witness my hand, and the seal of the Court, at New Or-
[SEAL.] leans, this third day of July, in the year of our Lord 1841.

DUNCAN N. HENNEN, *Clerk,*
By H. B. PAGE, *D'y Clerk.*

Extract from the Minutes.

Opposition of the Judges.

CIRCUIT COURT OF THE UNITED STATES,
Ninth Circuit, Eastern District of Louisiana.

Thursday, April 29th, 1841.

E. P. GAINES and Wife
vs.
CHEW & RELF, *et als.*

In this case, there being a difference of opinion, the Judges delivered their opinions seriatim.

It appearing that, on the trial of the demurrer in this case, these questions arise :

First. Is the bill multifarious? and have the complainants a right to sue the defendants jointly in this case ?

Secondly. Can the Court entertain jurisdiction of this case without probate of the will set up by the complainants, and which they charge to have been destroyed, or suppressed?

Thirdly. Has the Court jurisdiction of this case? or does it belong exclusively to a court of law?

Upon these points, the Judges were opposed in opinion. Upon motion of the complainants' counsel, the same were ordered to be certified to the Supreme Court.

CLERK'S OFFICE, CIRCUIT COURT OF THE UNITED STATES,
Ninth Circuit, Eastern District of Louisiana.

I certify the foregoing twenty-nine pages and a half, comprising Bill in Equity, of ten pages, Demurrer of Barnes and wife, of nine pages, Demurrer of Chew and Relf, of nine pages, and the Opinion of the Judges, of one page and a half, to contain full and complete copies of the record of the original bill and demurrers, filed in this office, and of the opinion thereon.

Witness my hand, and the seal of the Court, at New Or-
[SEAL.] leans, this tenth day of July, eighteen hundred and forty-one.

DUNCAN N. HENNEN, *Clerk*,
By H. B. PAGE, *D'y Clerk*.

Filed Sept. 3d, 1841.